

THE EFFECTS OF TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS AND THE ATTEMPTS TO EXTERMINATE THE PROBLEMS IN LAO PDR IN THE JUDICIAL SECTOR

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I. TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS AND THE EFFECTS OF THESE PROBLEMS

Many people may have heard the phrases “trafficking in persons” and “smuggling of migrants”, but there are not many people who truly comprehend their meanings. How is trafficking in persons related to smuggling of migrants, and what are the consequences of trafficking in persons and smuggling of migrants? As a matter of fact, the consequences of trafficking are hidden and difficult to see. People may be considered trafficking victims regardless of whether they were transported to an exploitative situation, previously consented to work for traffickers, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers’ aim to exploit and enslave their victims and the myriad coercive and deceptive practices they use.¹ All victims of trafficking in persons will probably be subject to physical, psychological, and social impact. Victims often experience or face harsh physical impacts due to excessive work or the use of force by traffickers. Furthermore, victims are perhaps exposed to serious health risks, such as HIV/AIDS, as well as serious mental health risks.² In addition, trafficked persons often lack access to basic necessities such as safety, food, sleep, hygiene and medical care. Moreover, trafficking in persons threatens and violates fundamental human rights and has a direct impact on economic and social development and the security of nations. Trafficking in persons is also related to sex trafficking, forced labour and unlawful recruitment and use of child soldiers and leads to many problems, for instance when a person engages in a commercial sex act such as prostitution. As the result of force, threats of force, fraud and so on, these people are victims of trafficking. Forced labour, sometimes also referred to as labour trafficking, encompasses the range of activities, such as recruiting, harbouring, transporting, providing or obtaining, when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception or other coercive means to compel someone to work. Furthermore, child soldiering is also one kind of human trafficking when it involves the unlawful recruitment or use of children through force. Lao PDR, as an origin country and one of the countries that has been affected by trafficking in persons and smuggling of migrants, needs to eliminate the problems efficiently and immediately.

II. THE ATTEMPTS TO EXTERMINATE THESE PROBLEMS FROM LAO PDR AND HOW THE PEOPLE’S COURT WORKS TO COMBAT THESE PROBLEMS

A. How Has Laos Been Affected by Trafficking in Persons and Smuggling of Migrants?

Trafficking in persons and smuggling of migrants are two main problems which not only affect lives, human dignity, human fundamental rights and property of persons but also have an effect on economics and the security of nations. Over the years, Lao PDR has been affected by trafficking in persons and smuggling of migrants due to the geographical location and characteristics of the country, which shares borders with several countries such as Thailand, Myanmar, China, Vietnam and Cambodia. This has translated into an enabler that facilitates inward and outbound travel as well as rapid economic development specifically infrastructure and technological development, which are also underlying factors that promote labour migration from rural areas to urban areas and from country to neighbouring countries and other countries. In most cases, however, these migrations are mostly illegal and largely involve the youth, women and

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¹ What is trafficking in persons? U.S. Department of State, Diplomacy in action, www.state.gov (last visited March 10, 2019)

² Human Trafficking Search (HTS) seeks to raise awareness and help prevent and eliminate human trafficking worldwide, <http://humantraffickingsearch.org/> (last visited on March 9, 2019)

children. In Laos, over the course of years, trafficking in persons has grown into a crime with many different forms and methods, for instance deception by offering a chance to travel, offering jobs in the service industry, promising marriage to foreigners by first getting engaged or offering a dowry before processing documents to go abroad. Moreover, efforts are also made by criminals to encourage the Lao labour force to go to work abroad, particularly in Thailand, illegally, and they often go without going through the official process, for instance the related sectors namely with the Ministry of Labour and Social Welfare in which they are at risk to become victims of the trafficking in persons.

B. How the Lao People's Court Works in Order to Combat Trafficking in Persons and Smuggling of Migrants

The People's Court of Lao PDR is one of the most significant and relevant sectors which has responsibilities and obligations in solving trafficking in persons problems. The main responsibilities of the Lao People's Court is to consider or adjudicate trafficking in persons cases in order to protect the rights of victims and to punish persons who commit the crime of trafficking in persons and smuggling of migrants, and to educate people about law and the dangers of trafficking in persons. Furthermore, the People's Supreme Court organized a workshop from 12 to 16 November 2018 in Luangnamtha Province for judges and assistant judges from six northern provinces such as Luangprabang, Oudomxay, Xayabouly, Borkeo, Xiengkhuang and Luangnamtha on elevating knowledge and skills to process cases of trafficking in persons. The workshop was organized by utilizing the funds of the National Steering Committee on Anti-Human Trafficking which was attended by a total of 75 participants who were judges and assistant judges. One of the purposes of the workshop was to disseminate guidelines for case management of trafficking cases which was written and developed with the assistance of the Australia-Asia Programme to combat trafficking in persons, enabling the participants to further disseminate these guidelines for judges all over the country by starting with the six northern provinces of Laos first. From the workshop it was observed that the judges and assistant judges were able to gain relevant knowledge and increase their understanding on issues pertaining to trafficking in persons, the structure, the challenges and how to manage cases of trafficking in persons. It was seen that the original percentage of understanding before the workshop was held was at 78%, but after attending the meeting it was determined that 85% were able to better understand the various methods to manage cases of trafficking in persons.³

The responsible organizations from the justice sector have carried out their duties based on the scope of their responsibilities and strictly complied with the criminal procedure law, the trafficking in persons law and the penal code no. 26/NA, date 17 May 2017. In 2018, the anti-human-trafficking police at the central and local levels collected information and made a list of target areas, locations, individuals, routes at risk of human trafficking problems, received complaints, petitions and other trafficking in persons requests and prosecuted 39 cases (26 new cases, 13 pending cases from 2017) involving 63 accused persons: 32 of them were females and 31 males; there were 64 victims, and 63 of them were females and 1 male; for those who were victims, 24 were under 18 years of age. 21 cases were already initiated for prosecution involving 32 accused persons: 13 of them were females; there were 34 victims and they were all females. Out of these, 1 case was suspended because the accused person could not be located, and 11 cases could not be prosecuted because the elements of the crime were not complete. 9 cases were forwarded to the People's Prosecutor involving 16 accused persons: 4 of them were females. There were 19 victims, all females, out of whom 7 were below the age of 18. Recently, the police have investigated 12 trafficking in persons cases, involving 17 accused persons and 30 victims, 29 of whom were females and 12 were below the age of 18 (11 were females). The People's Prosecutor received a total of 14 trafficking in persons cases, involving 25 accused persons, 15 of whom were females. In 2018, the People's Court received 8 new trafficking in persons cases and 4 cases pending from 2017, totalling 12 cases. The People's Court had passed judgments on 11 cases, involving 27 defendants, 10 of whom were females.⁴

Over the past few years there have been a lot of foreigners who have come to Laos in order to marry Lao women, and then they have taken Lao women to their countries. There has been an especially huge number of Chinese men who have come to Laos in order to marry Lao women and have taken these women

³ The Annual Report on Anti-Trafficking in persons of People's Court of Lao PDR 2018, The People's Supreme Court of Lao PDR (January 12, 2019)

⁴ The Annual Report on Anti-Trafficking in persons of People's Court of Lao PDR 2018, The People's Supreme Court of Lao PDR (January 12, 2019).

back to their country. Some of them, after taking their wives to their country, have sold their wives to other men or have tortured and forced these women to engage in sexual activity for payment, so they can receive great financial benefit from the exploitation of these women. Therefore, this incident becomes a main issue in Lao society for the trafficking in persons problem.

1. Case 1

There was 1 defendant who had deceived Ms. D (Hypothetical person) and told her that she could become the wife of a Chinese man by going through the official process of filling out a memorandum, and the Chinese man would pay 20 million kip as dowry to Ms. D's parents. After that, the defendant took Ms. D and dropped her off with the Chinese man who asked to marry Ms. D at a hydroelectric power dam in Nathom District. As they arrived at the Mekong River the defendant abandoned Ms. D, and she was then raped by numerous Chinese men. Ms. D, under distress, returned home. Then the Chinese man who had asked to marry Ms. D told the defendant to go back and retrieve the dowry paid to Ms. D's parents in which the defendant obliged. The defendant arrived at Ms. D's house and saw that she was bedridden and unhealthy. Ms. D's father also refused to pay back the dowry because the money was used to treat Ms. D. The defendant proceeded to threaten her father that if they did not pay that money back then he would sue him in court. Under these circumstances, Ms. D's father agreed to pay the defendant 40 million kip. Afterwards, the defendant was arrested for his crimes. The court of first instance ruled that the defendant was guilty of trafficking in persons under article 9 of the law on Anti-Human Trafficking, article 7 and article 134, paragraph 3 of the revised 2005 penal law. The court then sentenced the defendant to 5 years' imprisonment and fined him 10 million kip; as for payment for civil damages, the court did not order any because the plaintiff did not ask for any.⁵

2. Case 2

There were 2 defendants. Defendant 02 told Defendant 01 to recruit Lao women, and Defendant 01 managed to get 2 Lao women and brought them to China. Then Defendant 02 brought the victims to be wives of Chinese men. Defendant 01 got a commission fee from Defendant 02. The court of first instance ruled that both defendants were guilty of human trafficking under the Article 134, paragraph 4 of the 2005 Penal Law (revised) and sentenced the two to 15 years of imprisonment and fines of 100 million kip. Additionally, the court issued a confiscation order of the assets obtained from the crime including 19,520,000 kip and 1 mobile phone from Defendant 02 and ordered both defendants to pay civil damages to the victims under the pre-trial settlement amount 220.5 million kip.⁶

3. Case 3

There was 1 defendant. The defendant sought and recruited 12 Lao women to marry Chinese men by taking them to meet the Chinese men in Xieng Khouang province (northern Laos) and then negotiated and agreed on dowries and signed marriage agreements. After payment for dowries, identity and travel document processing fees and other expenses for the girls and their families were then made, the defendant transported the Lao girls to the checkpoint (Boten International Checkpoint) and then left for China. Once arriving in China, some went to live with husbands and families and were able to contact families back home. Only Ms. 'A' (pseudonym) was locked up by the father in law (Chinese man) for 10 days. Ms. A has now returned to Lao PDR. The court of first instance ruled that the defendant was found guilty of human trafficking under Article 134 of the 2005 Penal Law (revised) and sentenced him to five years' imprisonment and fines of 10 million kip. Civil damage compensation was not considered by the court because the victim did not request it.⁷

However, these example cases do not mean that all marriages between Chinese men and Lao women will be considered as a trafficking in persons offences. Judges must use their experience, knowledge and discretion to hear the cases impartially. For example, there are some judges who hear cases and sentence the defendants to prison with a trafficking in persons offence only because the accused married a Lao woman. As a result,

⁵ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (February 12, 2019).

⁶ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (April 20, 2019).

⁷ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (April 20, 2019).

it will lead to various problems when judges do not have knowledge or experience in presiding over trafficking in persons cases. They will not be able to give justice to victims, punish the persons who commit the crimes or give justice to the innocent persons who do not commit the crimes at all.⁸

C. Methods to Exterminate all Forms of Trafficking in Persons and Smuggling of Migrants in Lao PDR

Over the years, many relevant sectors of Lao government have combated trafficking in persons efficiently by improving and amending various laws and policies related to anti-human trafficking, and the president of Lao PDR issued Decree no. 118/p, dated June 26, 2018, on the promulgation of the penal code, and promulgated it on November 1, 2018. Therefore, this penal code has the following human trafficking related provisions: for instance, under Article 214, the sale or stealing of organs or human tissues shall be punished with five to seven years of imprisonment and shall be fined from 10 million kip to 50 million kip. Any person who has committed an offence of stealing organs or human tissue shall be punished with five to ten years of imprisonment and shall be fined from 20 million kip to 70 million kip. Any person who has committed a repeated offence of selling or stealing organs or human tissues or worked as part of an organized crime group or caused severe damages, shall be punished with seven to twelve years of imprisonment and shall be fined from 30 million kip to 100 million kip. The buyer shall also be subject to the same degree of punishment, and attempt to commit an offence shall also be subject to punishment.

Furthermore, under Article 215, trafficking in persons shall mean recruitment, abduction, movement, transportation or transfer, harbouring or receipt of persons domestically or internationally, providing a shelter or a hiding place by means of persuasion, recommending, deception, payment giving benefit, inducement, incitement or abuse of power, the use of threat or other forms of coercion, debt bondage, concealed child adoption, concealed engagement, concealed marriage, pregnancy for another, forced begging, producing, showing and publishing pornographic materials or by other forms of labour exploitation, sexual exploitation, slavery, prostitution, involuntary prostitution, removal of organs for the purpose of trade and other forms of unlawful conduct against culture and traditions or for other purposes to gain benefits.

In addition, Article 251 (the use of trickery to achieve sexual intercourse), Article 253 (forced prostitution), Article 254 (prostitution of others), Article 256 (publishing child pornographic materials), Article 257 (possession of child pornographic materials), Article 260 (prostitution), Article 262 (child sexual tourism), Article 263 (violence against women and children) and Article 269 (marriage with children). In addition, Laos also uses other means in order to combat trafficking in persons problems by monitoring labour groups migrating to work abroad and domestically and using measures to prevent the complicity of Lao government officials and diplomats.

D. Problems and Obstacles in Problem-Solving

In parallel with the improvement and amendment of various laws related to anti-human trafficking, there are still lingering challenges that must be addressed in order to effectively counter trafficking in persons⁹:

- Effective coordination at the central and local levels are still a challenge that hinders efforts to counter trafficking in persons;
- Efforts are needed to raise public awareness on policies, laws, dangers and impacts of trafficking in persons and must be intensified;
- Knowledge and understanding pertaining to the laws on anti-human trafficking by relevant sectors are still inconsistent and inadequate;
- There is still a lag in time in providing information for relevant officials that are in charge of processing cases on human trafficking, especially for transnational cases because exploiters and perpetrators are located abroad;
- Monitoring and evaluation of victims after returning to their families and society are still lacking;
- Providing initial financial support for victims of trafficking in persons is still limited;
- Bilateral and multilateral cooperation with international organizations and international non-

⁸ Chanthanom SIRIVATH, Lao People's Supreme Court Justice, Member of the Secretariat for National Steering Committee on Anti-Humana Trafficking (interviewed April 19, 2019).

⁹ The Annual Report on Anti-Trafficking in persons in the Lao PDR 2018, The National Steering Committee on Anti-Human Trafficking (February 12, 2019).

governmental organizations are not at maximum capacity, and some agreements made in memorandums of understanding have yet to be implemented or cannot be implemented in the given timeframe;

- Officials and relevant authorities still lack the knowledge, capacity and experience to efficiently combat the problem of trafficking in persons.

1. Problems and Obstacles in the Lao People's Court

The Lao People's Court is a state agency that has responsibilities and obligations to enforce law by adjudicating cases in order to protect the rights of people, to give people justice and to punish the persons who commit crime. Trafficking in persons and smuggling of migrants are two main problems that the Lao People's Court also works hard to exterminate efficiently and promptly.

According to the Lao law, trafficking in persons has a severe punishment. Therefore, the adjudication of this kind of case is very significant. Judges who hear these cases must have specific knowledge and experience in handling trafficking in persons cases and must be able to give justice to victims and to punish the persons who commit the crimes. On the other hand, judges must give justice to the innocent persons who do not commit the crimes as well. However, this kind of crime is a new matter for the Lao judiciary. The majority of Lao judges, assistant judges and legal officers are not experienced in handling trafficking in persons and smuggling of migrants cases. Even though over the past few years the Lao People's Court and other organizations have conducted the trainings, meetings or workshops on these issues for judges, assistant judges or legal officers in Laos or foreign countries, only a few of them have attended those trainings or workshops. Most judges, assistant judges or legal officers who work in other provincial courts or work in rural areas have barely had the opportunity to be trained on trafficking in persons because of the limited budget which the Lao People's court receives every year. Therefore, it may lead to problems when they hear the cases. Furthermore, many judges, assistant judges and legal officers are having difficulty in interpreting the law and the elements of trafficking in persons offences. In addition, in some cases in the investigation, prosecution and adjudication processes, their interpretation of the cases and their explanation of the cases can also differ significantly. For instance, if the prosecutor charges an accused with a trafficking in persons offence, when this case comes to court, the court hears the case with a different crime. At the same time, the prosecutor charges the accused with an illegal immigration crime, and when the case comes to court, the accused may be found guilty of committing a trafficking in persons offence.

The Vientiane Capital Court of Lao PDR is a general jurisdiction court which can hear most kinds of cases, and it has authority over civil matters, criminal, labour, family, juvenile, commercial and administrative cases of the Vientiane Capital city in Lao PDR and including the cases that are appealed from the lower courts. It is considered as the biggest court of first instance in the country in terms of the number of cases which come to court every year. The judicial system begins with a court of first instance, whose work may be reviewed by an appellate court, and then ends at the court of last resort. The Vientiane Capital Court typically handles civil matters for which the amount in controversy exceeds the sum or value of 300 million kip, and it is also responsible for criminal cases which have a minimum sentence of three years' imprisonment. For trafficking in persons cases, there are only two Vientiane Capital Court judges who have been trained on trafficking in persons. The rest of the judges have never been trained on this issue. The problem is when the cases come to court, their interpretation of the law on trafficking in persons between the judges who have been trained differs from the judges who have not been trained. The judges who have not been trained on trafficking in persons only use their knowledge and experience from their work for the criminal court. Now the Vientiane Capital Court is confronted with a difficult situation: the lack of judges, assistant judges or legal officers who have sufficient knowledge and experience in trafficking in persons.¹⁰

While the Lao judiciary is confronted with many difficulties from the impact of the lack of personnel who have sufficient knowledge and experience in trafficking in persons, the Lao judiciary also faces problems in finding the evidence of the crimes, especially the crimes which happen in foreign countries. They also face the problem of searching for, arresting and extraditing foreign traffickers from destination countries because most of the cases happen in other countries. As a consequence, it is extremely difficult to track the traffickers and find the evidence after they commit the crimes. Moreover, cooperation among government sectors to share information related to the crimes or evidence of the crimes does not happen in a timely manner. In addition, some victims are not willing to cooperate with government officials in the legal process when they

¹⁰ Bounpasong Chittakone, Vientiane Capital Court Judge (interviewed April 19, 2019).

come back to Laos. Many of them do not want to take any legal action against traffickers because they are frightened of the traffickers; they are also frightened of and ashamed of the incidents that have happened, and they just want to go home. As a result, it leads to lengthy proceedings, which impacts the victims and their rights.¹¹

III. MEASURES TO COMBAT TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS

The Lao PDR, as an origin country, is one of the countries that has been affected by trafficking in persons due to its geographical location and its characteristic as a country which shares borders with several countries. This has enabled inward and outbound travel as well as rapid economic development, specifically infrastructure and technological development, which are also underlying factors that promote labour migration from rural to urban areas and from country to country. In most cases, however, these migrations are mostly illicit or forced with some groups being deceived in which victims of trafficking in persons largely involve the youth, women and children. Over the years, Laos has endeavoured to fight trafficking in persons and smuggling of migrants by establishing, improving or amending various laws which combat human trafficking, establishing a mechanism to monitor labour groups that facilitate work abroad and domestically. Moreover, the Lao government also creates measures to prevent and repress the complicity of Lao government officials and diplomats, victim identification measures and other measures which help to combat human trafficking efficiently. However, Laos still needs to educate and advertise the negative impacts of trafficking in persons and smuggling of migrants, especially people who live in rural or remote areas. Furthermore, the Lao government also needs to conduct more trainings, meetings and workshops on trafficking in persons and smuggling of migrants for government officials, particularly officials who work directly on these problems such as police, prosecutors and judges.

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